

92-266

**LIFETIME**  
T E L E V I S I O N

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NANCY R. ALPERT  
VICE PRESIDENT  
BUSINESS AND LEGAL AFFAIRS

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October 13, 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

CABLE SERVICES

OCT 14 7 53 AM '94

**BY HAND**

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Meredith J. Jones  
Chief, Cable Services Bureau  
Federal Communications Commission  
Washington, D.C. 20554

**Re: MM Docket No. 92-266  
Permitted Written Ex Parte Presentation**

Dear Ms. Jones:

We appreciate the opportunity to submit additional information that may assist the Cable Services Bureau in its evaluation of the "going-forward" issues. We are particularly concerned about two issues that we understand the Commission is considering:

1. The deletion of the previously-adopted 7.5% mark-up on programming cost increases for existing program services; and
2. Permitting program services that are carried on a regulated tier to be "cloned" and simultaneously carried on a new product tier.

1. 7.5% Mark-Up

Lifetime Television ("Lifetime") would strongly urge the Commission at a minimum to maintain the 7.5% permitted mark-up on increases for existing program services. In fact, Lifetime through its previously filed Comments and Reply Comments has stressed the necessity of permitting a minimum mark-up, even if only a few cents, in order not to penalize low-cost services with low annual fee increases to cable operators.

Lifetime has consistently urged the Commission to adopt even-handed incentives for operator investment in the development of quality programming. The deletion of the 7.5% mark-up threatens the viability of advertiser-supported program services that depend on broad-based carriage to provide consumers high value at low fees. If the 7.5% mark-up on existing programming cost increases is deleted, operators will have little incentive to maintain existing

programming services: their profit margins will actually decrease if they must absorb negotiated fee increases from the programmers without being able to pass on any amounts other than the actual costs. On the other hand, operators will retain an incentive to add new channels (presumably through the flat fee proposal being considered by the Commission for net additions of program channels). Existing advertiser-supported services will be disadvantaged by such a one-sided incentive. By discouraging carriage of existing program services on the regulated tier, the Commission would be encouraging the migration of low-fee, advertiser-supported services to a la carte tiers. As many advertiser-supported services have explained in their Comments and Reply Comments, broad-based carriage on regulated tiers is critical for their survival and growth. If subscriber penetration levels fall, advertising revenues will likely plummet. While Lifetime supports the Commission's proposal prohibiting the migration of existing services on regulated tiers to a la carte tiers, if incentives are created only to support new programming channels, operators may simply drop existing program services. Since operators are entitled to an 11.25% return on their cost-of-service, it seems only reasonable that operators be entitled to an equivalent rate of return on their programming costs; consumers are presumably purchasing cable for the diversity of programming options available.

Originally, the 7.5% mark-up on programming cost increases was paired with a corresponding 7.5% pass-through on programming cost decreases. Lifetime believes that both pass-throughs should be retained. The mark-up on cost decreases protects against encouraging "switch outs" of one service over another (e.g., a new channel over an existing channel, or a higher priced channel over a lower priced one) and requires the operator to share cost reductions with the subscribers. As described above, the 7.5% mark-up on cost increases creates on-going and even-handed incentives to operators to invest in existing program services and to maintain the integrity of the regulated tiers.

## 2. New Product Tier

While Lifetime supports the concept of a "new product tier" for the launch of newly-added or "incubated" program services, Lifetime believes that "cloning" program services for a new product tier that are currently offered on regulated tiers is the functional equivalent of direct migration. If operators can offer all of the regulated services, together with new services, on an unregulated "new product tier", there is every reason to believe that operators will market the "new product tier" in such a way as to shift subscribers from the regulated tiers to the new product tier. All programming services would then be pressured to be carried on the new product tier or lose out on the "critical mass" of viewers. Since advertiser-supported services are dependent upon being distributed in a large package of offerings which can be offered to subscribers for a low package fee by operators, the costs to programmers of marketing their services on a new product tier as compared to "tune-in" advertising for the regulated tier would increase significantly. If advertising revenues decrease due to lower penetration levels, cable operator fees would have to be increased to maintain programmers' commitment to program investment and in order to compensate for lost viewers and lost advertising revenues. Ultimately

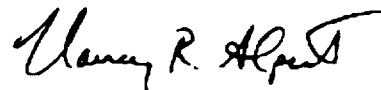
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subscribers would be required to pay higher cable costs to cover increased license fees for the same, or in all likelihood lower quality, programming.

Lifetime urges the Commission to resolve the "going-forward" rules quickly and in an even-handed manner that creates investment incentives for both new and existing program services. We will be happy to provide you with any additional assistance that you may request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nancy R. Alpert". The signature is fluid and cursive, with a long horizontal stroke at the end.

cc: Chairman Reed Hundt  
Commissioner James Quello  
Commissioner Andrew Barrett  
Commissioner Susan Ness  
Commissioner Rachelle Chong  
Kathleen Wallman, Esq.  
FCC Secretary (2 copies)